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# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~1425~~. 1033

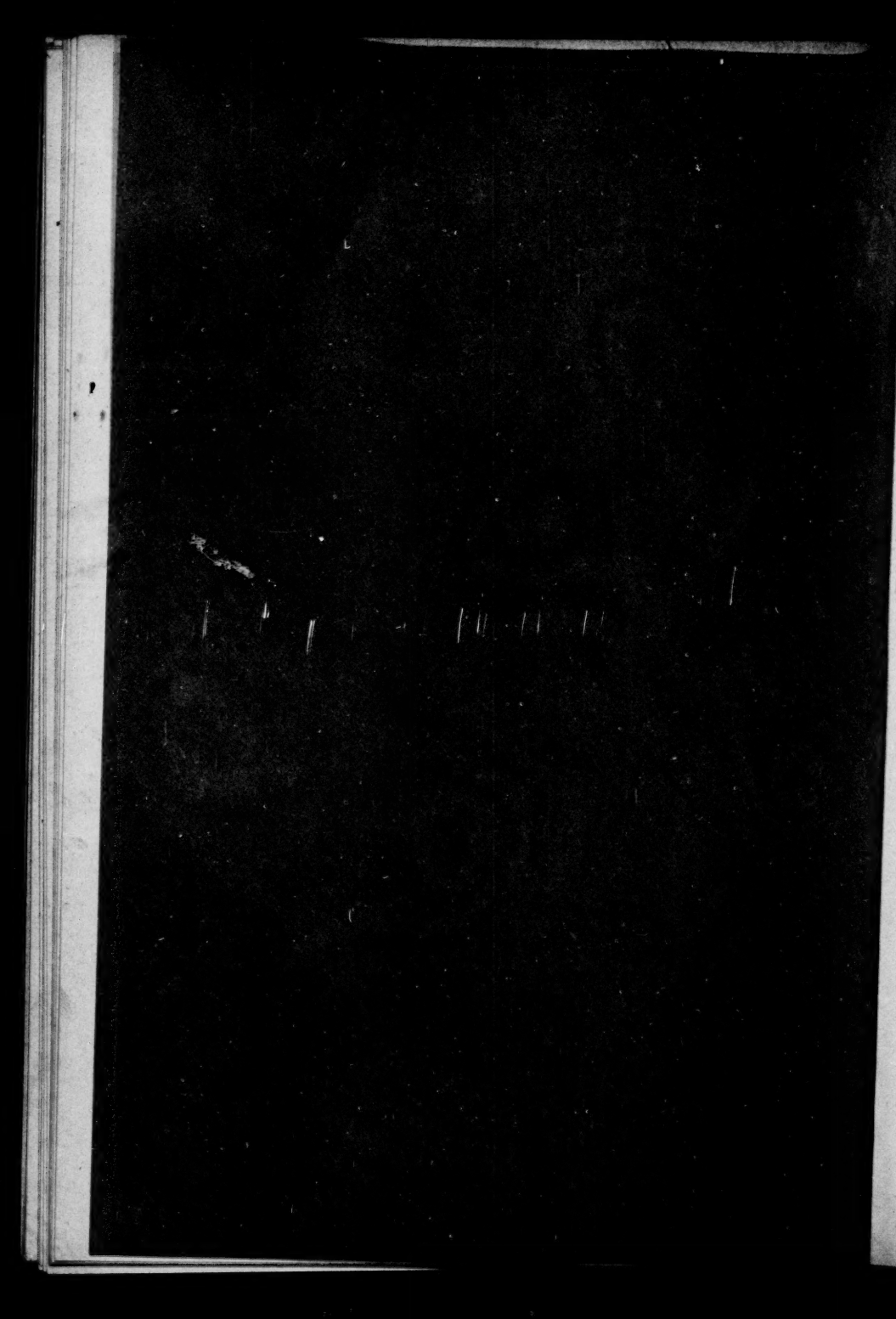
THE UNITED STATES, APPELLANT,

vs.

TYLER DAVIS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED OCTOBER 27, 1888.



# SUPREME COURT OF THE UNITED STATES.

## OCTOBER TERM, 1888.

## No. 1425.

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THE UNITED STATES, APPELLANT,

vs.

TYLER DAVIS.

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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1 UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a district court of the United States for the district of Maryland, begun and held at the court-house in the city of Baltimore on the first Tuesday in September, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and eighty-seven.

Present, the honorable Thomas J. Morris, judge Maryland district; Thomas G. Hayes, esquire, attorney; George H. Cairnes, esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

TYLER DAVIS
*vs.*
THE UNITED STATES.

*Petition under the act of March 3d, 1887, chapter 359.—Filed 2d September, 1887.*

In the U. S. district court, district of Md., Court of Claims side.

TYLER DAVIS
*vs.*
THE UNITED STATES.

To the honorable Thos. J. Morris, judge of said court:

2 Your petitioner, Tyler Davis, by John E. Bennett, jr., his attorney, respectfully shows to your honor—

1. That he was duly qualified and appointed, according to the laws of the United States, to serve as a special marshal of registration and election prior and during the Congressional election of 1886, and herewith he prays that there may be produced before your honor the oath of appointment whereto he subscribed, now in the hands of the Government.

2. That he faithfully and diligently performed his duties and served all required time in the capacity of marshal as aforesaid, and that he was thereupon entitled under S. 2031 of the Rev. Statutes of the United States to wages at the rate of $5.00 per day to the extent of ten days.

3. That the United States has refused to pay him his wages as provided by its said laws, and has paid him only but $25.00, in evidence of which he prays that there may be produced before your honor the receipt he signed for the money so paid and the duplicate warrant issued to him for the full sum of $50.00, both of which are now in the hands of the Government.

That all and several the matters and things are true and within the jurisdiction of this honorable court.

To the end, therefore, that your honor may render judgment
3 against the United States Government for the balance due your petitioner, being the sum of $25.00, as aforesaid.

JOHN E. BENNETT, Jr.,
*Attorney for Petitioner.*

Sworn to before me this 2d day of September, A. D. 1887, by Tyler Davis.

JAS. W. CHEW,
*Clk D't C't U. S.*

10700

*Affidavit of service of copy of said petition on United States district attorney for Maryland.—Filed 7th October, 1887.*

In the U. S. district court, district of Maryland, Court of Claims side.

TYLER DAVIS
*vs.*
THE UNITED STATES.

On this 7th day of October, 1887, before the subscriber, clerk of the U. S. district court, district of Maryland, personally appeared William M. Isaac, who made oath on the Holy Evangely of Almighty God that he served on Thomas G. Hayes, U. S. district attorney for the district of Maryland, a copy of the petition filed in the above-entitled case, and that said service was made by him in his capacity as deputy U. S. marshal on the 7th day of October, 1887.

Signature of affiant.

W. M. ISAAC.
JAS. W. CHEW, *Clk,*
*Clerk U. S. District Court, District of Maryland.*

4 *Answer to petition.—Filed 27th October, 1887.*

In the district court of the United States.

TYLER DAVIS
*vs.*
THE UNITED STATES.

To the honorable Thomas J. Morris, judge of said court:

The answer of the United States, by Thomas G. Hayes, its attorney, to the petition filed in the above cause respectfully states:

1st. That the United States admits the matter and things aver'ed in the first paragraph of the said petition.

2nd. That the United States admits that the said petitioner faithfully and diligently performed the service as set forth in the second paragraph of said petition, and further admits that the petitioner was entitled to be paid wages at the rate of $5.00 per day, but not for the length of time claimed by said petitioner, for the reason set forth in the succeeding paragraph of this answer.

3rd. That the United States admits the facts aver'ed in the third paragraph of said petition, except the averment that the said $50 was in the hands of the marshal, but says that the said petitioner was only
5 entitled to the amount he received, to wit, $25.00, because by a circular letter received by the marshal from the honorable Attorney-General of the United States, dated October 15th, 1886, the said marshal was ordered to pay only for five days' service. The words of said circular letter so ordering the marshal were as follows:

"It is not expected that supervisors and deputy marshals will receive compensation for more than five days' service, and they should be so informed; within this time all can be done, it is thought, that ought to be done."

And the United States prays that said petition may be dismissed with costs.

And, as in duty bound, &c.,

THOMAS G. HAYES,
*U. S. District Attorney.*

*Demurrer to answer.—Filed 27th October, 1887.*

In the United States district court, district of Maryland, Court of Claims side.

TYLER DAVIS
*vs.*
THE UNITED STATES.

The plaintiff in the above-entitled cause demurs to the answer of the defendant for that the said answer doth not disclose a good defence in law.

JOHN E. BENNETT, JR.,
*Attorney for Plaintiff.*

6 *Affidavit of service of copy petition on the Attorney-General of the United States.—Filed 16th November, 1887.*

THE UNITED STATES OF AMERICA,
*District of Maryland, ss:*

I hereby certify that on this 25th day of October, 1887, before George Morris Bond, a commissioner of the United States for the fourth circuit in and for the Maryland district, personally appeared John E. Bennett, jr., and mad' oath, in due form of law, that he is the attorney for the petitioner in the case of Tyler Davis vs. The United States, instituted in the district court of the United States, district of Maryland; and that he did, pursuant to the act of Congress in cases of claims against the Government, mail by registered letter to the Attorney-General of the United States a copy of the petition filed in the said case.

In witness whereof he subscribes his name hereto.

JOHN E. BENNETT, JR.

[COMM'R'S SEAL.] GEORGE MORRIS BOND,
*United States Commissioner for the Maryland District.*

7 16th November, 1887, the United States by its attorney joins issue on the demurrer.

*Opinion and judgment of the Court.—Filed 18th November, 1887.*

In the district court of the United States for the district of Maryland.

TYLER DAVIS
*vs.*
THE UNITED STATES OF AMERICA.

The plaintiff has brought this case against the United States in the U. S. district court for the Maryland district by filing his petition in accordance with the act of Congress of March 3, 1887, chap. 359, by which

jurisdiction in cases against the United States is given to the court where the amount of the claim does not exceed $1,000, and the claim is founded upon the Consti'tion and the laws of the United States (except pensions) or any regulation of an executive department, or upon any contract express or implied with the Government of the United States, or for damages liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable.

8 The plaintiff's petition has been only served upon the district attorney of this district, and upon the Attorney-General of the United States, as required by the act of Congress.

The plaintiff alleges that there is due him by the United States the sum of twenty-five dollars ($25) for the balance of his compensation as a special marshal of registration and election prior to and during the Congressional election of 1886, in the city of Baltimore, he having faithfully and diligently performed his duties, and being entitled to $5 per day for ten days, and having been paid only twenty-five dollars ($25), payment of the balance claimed by him having been refused.

The answer of the United States admits that the plaintiff has performed the service claimed for in his petition, but denies that he is entitled to receive more than the twenty-five dollars already paid to him, for the reason that by a circular letter addressed by the Attorney-General of the United States to the marshal of this district, dated the 15th Oct., 1886, the marshal was directed to notify the special marshals that they would only receive twenty-five dollars.

The plaintiff has demurred to the answer of the United States and joinder in demurrer has been sustained.

## FINDINGS OF FACT.

9 1. I find that the plaintiff was duly appointed and commissioned special deputy marshal of election for the 18th ward of Baltimore City, in the State of Maryland, by George H. Cairnes, esq., United States marshal for the district of Maryland, on the 3rd day of September, A. D. 1886, in pursuance of section 2021 of the United States Revised Statutes, and the supplements and amendments thereto, and that he duly qualified and entered upon his duties.

2. I find that the laws of Maryland governing registration for Congressional and other elections in the city of Baltimore require the officers of registration, for the purpose of correcting the lists of qualified voters, shall sit with open doors in the several wards of the city from 9 a. m. to 9 p. m. for fifteen successive days, commencing on the first Monday of September, and afterwards, for the purpose of revising the lists, for three (3) successive days, commencing on the Monday of October.

3. I find that the plaintiff, in pursuance of his said appointment, and of the provisions of section 2016 of the Revised Statutes, which authorized and required the supervisors of elections to attend at all times and places fixed for the registration of voters, who, being registered, would be entitled to vote for a representative or delegate in Congress, and to

10 personally inspect and scrutenize such registration, and in pursuance of section 2021, which made it his duty, when required thereto,

to aid and assist the supervisors of election in the verification of any lists of persons who may have registered, did attend the said registration in the said ward for which he was appointed for the purpose of aiding and assisting the supervisors of election, for fifteen days in September, A. D. 1886, and for three days in October, 1886, being October 4th, 5th, and 6th in said year.

4. I find that the U. S. marshal for this district, on the 16th October, 1886, received from the Attorney-General of the U. S. a circular letter, in which he notified the marshal that "It is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be done."

5. I find the plaintiff was on duty and had performed eighteen days of proper and necessary service as special marshal before the circular letter of the Attorney-General, relied upon in the answer of the United States, had been received.

CONCLUSION.

Section 2031 of the Revised Statutes, "and there shall be allowed
11 and paid to * * * each special deputy marshal who is appointed and performs his duty under the preceding provisions, compensation at the rate of five dollars per day for each day he is actually on duty, not exceeding ten days."

Under this law the plaintiff earned and is entitled to eight dollars compensation, and having received but twenty-five dollars, I sustain the demurrer, and I do give judgment in favor of the plaintiff against the United States for the sum of twenty-five dollars, with costs to the plaintiff, being the fees paid by him to the clerk of the court, amounting to $2.55.

THOS. I. MORRIS,
*District Judge.*

Therefore it is considered by the court here that the said plaintiff recover against the said defendant as well the said sum of twenty-five dollars for his damages, as the sum of two dollars and fifty-five cents, adjudged by the court here unto said plaintiff for his costs and charges in this behalf expended.

Memorandum.—Judgment was rendered in this case on the 18th November, 1887.

*Application and notice of appeal to the Supreme Court of the United States by the United States.—Filed 16th January, 1888.*

In the district court of the United States for the district of Maryland, December term, 1887.

TYLER DAVIS
*vs.*
THE UNITED STATES.

From the judgment rendered in the above-entitled cause on the 18th day of November, A. D. 1887, in favor of the plaintiff, the defendants,

12 by Thomas G. Hayes, United States district attorney, on the 16th day of January, A. D. 1888, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

THOMAS G. HAYES,
*U. S. District Attorney.*

In the U. S. district court, district of Maryland.

TYLER DAVIS
*vs.*
THE UNITED STATES.

To the honorable Thomas I. Morris, judge of said court:

Tyler Davis, by H. Arthur Stump, his att'y, prays the court that a docket fee of ten dollars be allowed the att'y in the judgment in this case against the United States.

H. ARTHUR STUMP,
*Attorney.*

The motion and prayer of the plaintiff in the above-entitled case that there be taxed as part of the costs for which he is awarded judgment against the United States a docket fee of ten dollars to his attorney is refused and denied, the court considering that it has no power to allow a docket fee to the attorney for the reason that section 15 of the act of March 3, 1887, empowers the court to allow to the prevailing party as costs, only the costs actually incurred for witnesses and summoning the same, and fees paid to the clerk of the court.

13 Oct. 5th, 1888.

THOS. I. MORRIS, *Judge.*

The petitioner, by H. Arthur Stump, his attorney, prays an appeal from the order in the above cause, refusing to allow the docket fee above prayed for to be taxed as costs in the judgment against the United States, to the Supreme Court of the United States.

H. ARTHUR STUMP,
*Atty. for Pl'tff.*

And thereupon it is ordered by the court here that a transcript of said judgment, together with all things relating thereto, be transmitted to the Supreme Court of the United States to be held on the second Monday of October next, and the same is transmitted accordingly.

District of Maryland, to wit:

I, James W. Chew, clerk of the district court of the United States for the district of Maryland, do certify that the foregoing is a true record of the proceedings of the said court in the therein entitled cause.

In testimony whereof I hereto set my hand and affix the seal of the said district court on this 5th day of October, A. D. 1888.

[SEAL.] JAS. W. CHEW, *Clerk.*

(Indorsement on cover:) No. 1425. The United States, appellant, *vs.* Tyler Davis. Maryland D. C. U. S. Filed October 27, 1888.

# In the Supreme Court of the United States.

OCTOBER TERM, 1889.

THE UNITED STATES, APPELLANT,
*vs.*
TYLER DAVIS, APPELLEE.
No. 1033.

*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.*

## BRIEF OF APPELLANT.

### STATEMENT OF CASE.

This case came before the court at the October term, 1888, on a motion to dismiss the appeal. This motion having been decided adversely to the appellee (131 U. S. Reports, 36), comes before the court for the decision upon the merits.

Tyler Davis, September 3, A. D. 1886, in pursuance of section 2021 of the Revised Statutes, was duly appointed and commissioned a special deputy marshal of election for the eighteenth ward of the city of Baltimore, in the State of Maryland. The laws of Maryland governing registration for Congressional and other elections in the city of Baltimore require officers of registration, for the purpose of correcting lists of qualified voters, to sit with open doors in the several wards of the city from 9 a. m. to 9 p. m. for fifteen successive days, commencing on the first Monday of September; and afterwards, for the purpose of revising the lists, for three successive days, commencing on the first Monday of October. In pursuance of his appointment and of the provisions of section 2016 and section 2021 of the Revised Statutes, plaintiff was actually on duty in such capacity for fifteen days in September and three days in October, 1886. Plaintiff received from defendant the sum of $25.

This suit is brought to recover the sum of $25, being the difference between five days' services allowed and paid and ten days' services claimed. To this claim defendant answered that on the 16th day of October, 1886, the United States marshal for that district received from the Attorney-General of the United States notification "that it is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be."

The words in quotation are part of a circular letter issued by the Attorney-General of the United States in ac-

cordance with instructions from the President, contained in a letter of which the following is a copy:

EXECUTIVE MANSION,
*Washington, October* 5, 1886.

Hon. A. H. GARLAND,
*Attorney-General.*

DEAR SIR: You are hereby requested to take general charge and direction of the execution of the statutes of the United States touching the appointments of supervisors of election and special deputy marshals, and the performance of their duties, and their compensation, so far as these subjects are by the constitution and laws, under the supervision and control of the executive branch of the Government.

Yours truly,

GROVER CLEVELAND.

The circular letter is as follows:

DEPARTMENT OF JUSTICE,
*Washington, D. C., October* 15, 1886.

To ——— ———,
*United States Marshal,*
——— ———:

SIR: In pursuance of a letter of the 5th instant, from the President, directing the Attorney-General to take charge of the "appointment of special deputy marshals," "the performance of their duties and their compensation," together with "the compensation of supervisors," at the Congressional election in November next, your attention is directed to the provisions of Titles 24 and 26, chapter 7, Title 70, of the Revised Statutes. Under sections 2022 and 2024, Revised Statutes, you have power to keep the peace, protect supervisors, preserve order, prevent frauds, and enforce the law in towns of 20,000 inhabitants and upwards.

You should make yourself familiar with the statutes referred to, and see that they are understood by your deputies, who should be discreet men, impressed with the importance of an honest franchise.

The manner of discharging these duties by yourself and your deputies is largely left to your discretion. In matters involving questions of law, you are directed to consult the attorney of the United States for your district for needed information and advice. It is assumed that the duties can be performed without infringing upon the rights of any citizen in a manner that shall be firm and at the same time free from an unnecessary display of authority.

It is not expected that supervisors and deputy marshals will receive compensation for more than five days' services, and they should be so informed. Within this time all can be done, it is thought, that ought to be. You need vigilant men, who are conscientious workers, and no others.

Before payment each deputy and supervisor will present to you his commission, oath, and badge of office, with an affidavit that he is the person to whom the commission was issued; that he performed the days' services as charged, which will be annexed by you to the pay-roll as voucher for its adjustment. The same facts should also be known to you through other means.

Upon payment being completed, these accounts should be approved by the court and forwarded to this Department for action under the Executive order mentioned.

Very respectfully,

A. H. GARLAND,
*Attorney-General.*

No other is suggested, unless the foregoing constitutes a defense.

BRIEF OF ARGUMENT.

Two questions are involved:

(1) Has the President authority in any event to regulate the length of service and compensation of a supervisor of election?

(2) The services having been fully performed ten days before the circular letter was received by the marshal, is it applicable as a defense in this case, admitting that authority existed on the part of the President to regulate the length of service and compensation of a supervisor of election?

Perhaps no better exposition of the affirmative of these two propositions can be made than that of the learned Attorney-General, who caused the circular letter to be issued. The following instruction to enter a defense on the part of the Government states the reason and force of the circular:

> "You are instructed to enter defense that, under the instructions of the President to the Attorney-General, no payments could be allowed beyond the maximum of five days stated in the circular.
>
> By reference to the provisions of Titles 24 and 26 of the Revised Statutes you will see that before October 5, 1886, there was no Department authorized by law to make compensation for such services; that there is in the statutes no authority conferred upon a court to superintend the services of a supervisor, or to direct what days he shall serve; that there is nothing in the statutes which authorizes a chief supervisor of election to determine the number of days of necessary service of a supervisor; that without such authority in the power of the court or a chief supervisor, the dura-

tion of service, and the importance thereof, must depend upon the discretion of the supervisor, or upon that of an officer in charge of the administration of the law; that it is not the spirit of the law to allow a servant of the Government to fix the time and manner of his services, even within a given maximum; that in the discharge of such duties there must somewhere be found a legal responsibility and supervision; that ordinarily the time and expense are consonant with the spirit of the law when supervised and paid by a disbursing officer; that a disbursing officer can not be responsible for the irregular and interested services of an official without control or restraint; that the provision of Article II, section 3, of the Constitution, directing the President to "take care that the laws be faithfully executed," made the President the supervising officer and legal agent until an officer was designated; that the Executive order under the provision mentioned designated the Attorney-General; that thereupon the control over supervisors was given to the Attorney-General with the discretion given to the Executive to "care that the laws be faithfully executed;" that such mandate committed the matter to the discretion of the supervising power; that in the exercise of official discretion, compensation for a maximum of five days was fixed with Executive sanction; that the appointment of a supervisor by the court has the color of a contract, it is true, but of an inchoate contract, only complete when the services are approved by the other contracting party, who was the Executive prior to the appointment of the Attorney-General, and the latter subsequently; that the Executive mandate of the Constitution controlled the services of supervisors prior and the Attorney-General all services subsequent to October 5, 1886; that no other person or officer was clothed with

power in the matter; that, it being contrary to the spirit of the law for a subordinate to continue and control his own services in such a manner as he shall think just and necessary for the execution of the law, he must be subject to the Constitution and duly appointed powers; and, therefore, the action of the Executive and Attorney-General in the matter is final and conclusive."

We deem it fair to the court to say that the same questions have been passed upon by Federal courts in two instances, in each of which the conclusion reached is that the President had no authority to regulate the length of service and compensation in these matters.

Vide, *Stockdale, Supervisor of Election*, v. *The United States*, 39 Federal Reporter, 61.

*Berry* v. *The United States*, 35 Federal Reporter, 269.

JOHN B. COTTON,
*Assistant Attorney-General.*

FILED,
MAR 29 1889
JAMES H. McKENNEY,
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1888.

---

THE UNITED STATES, Appellant,

*vs.*

TYLER DAVIS, Appellee.

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## MOTION TO DISMISS APPEAL.

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CHARLES C. LANCASTER,

*Counsel for Appellee.*

Beresford, Printer,
Washington, D. C.

# In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE UNITED STATES, *Appellant*,
*vs.*
TYLER DAVIS, *Appellee*. } No. 1,425.

*Appeal from the District Court of the United States for the District of Maryland.*

EXTRACT FROM TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
*District of Maryland, to wit:*

At a District Court of the United States for the district of Maryland, begun and held at the court house in the city of Baltimore on the first Tuesday in September, being the sixth day of the same month, in the year of our Lord one thousand eight hundred and eighty-seven. Present, the honorable Thomas J. Morris, judge Maryland district; Thomas G. Hayes, Esquire, attorney; George H. Cairnes, Esquire, marshal; James W. Chew, clerk.

Among other were the following proceedings, to wit:

*Petition under the act of March* 3, 1887, *Chapter* 359. *Filed 2d September*, 1887.

IN THE U. S. DISTRICT COURT, DISTRICT OF MARYLAND.

TYLER DAVIS
*vs.*
THE UNITED STATES. } No. ——. Court of Claims side.

Amount prayed in petition, $25.00.
Final judgment.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

TYLER DAVIS
*vs.*
THE UNITED STATES. } No. ——

* * * * *

Therefore it is considered by the Court here that the said plaintiff recover against the said defendant, as well the said sum of *twenty-five* dollars for his damages, as the sum of two dollars and fifty-five cents, adjudged by the Court hereunto said plaintiff for his costs and charges in this behalf expended.

Memorandum.—Judgment was rendered in this case on the 18th November, 1887.

*Application and notice of appeal to the Supreme Court of the United States. Filed 16th January*, 1888.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

DECEMBER TERM, 1887.

TYLER DAVIS
*vs.*
THE UNITED STATES. } No. ——

From the judgment rendered in the above entitled cause on the 18th day of November, A. D. 1887, in favor of the plaintiff, the defendants, by Thomas G. Hayes, United States District Attorney, on the 16th day of January, A. D. 1888, makes application for and gives notice of an appeal to the Supreme Court of the United States.

THOMAS G. HAYES,
*U. S. District Attorney.*

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1888.

THE UNITED STATES, *Appellant*,
*vs.*
TYLER DAVIS, *Appellee*. } No. 1,425.

MOTION TO DISMISS APPEAL.

The appellee moves to dismiss the appeal in the above entitled cause for want of jurisdiction.

The facts as shown by the accompanying extracts from the record upon which the motion is based are the following:

The final judgment of the District Court of the United States for the District of Maryland was entered for appellee on the 18th day of November, 1887, in the sum of twenty-five dollars and costs.

On the 16th of January, 1888, an appeal was prayed by appellant to the Supreme Court of the United States, and allowed.

The transcript was filed in the clerk's office of this Court the 27th day of October, 1888.

CHARLES C. LANCASTER,
*Counsel for Appellee.*

BRIEF.

An appeal will not lie to this Court from a district court performing the appropriate duty of a district court.

The Sally *vs.* United States, 5 Cranch., 373.
Southwick *vs.* Postmaster General, 2 Pet., 442.

Under the Revised Statutes of the United States, section 691, as amended by the Act of February 16, 1875, section 3, 18 Stat. at L., 316, this Court has not jurisdiction to re-examine judgments of circuit courts (or district courts) rendered since May 1, 1875, in such actions, unless the matter in dispute shall exceed the sum of $5,000, exclusive of all costs.

Thompson *vs.* Butler, 95 U. S., 694.

The United States are not entitled to a writ of error or appeal if the same remedy would not be afforded under similar circumstances to a private party.

United States *vs.* Union Pacific R. R. Co., 105 U. S., 263.

Sections 2 and 9 of the Act of March 3, 1887, 24 Stat. at L., 505, did not change existing law governing appeals to this Court.

CHARLES C. LANCASTER,
*Counsel for Appellee.*

# IN THE SUPREME COURT OF THE UNITED STATES.

THE UNITED STATES, *Appellant*,
*vs.*
TYLER DAVIS, *Appellee*.
} No. 1,425.

NOTICE OF MOTION TO DISMISS.

*To the Attorney General of the United States:*

Take notice that I will present to the Supreme Court of the United States on the fourth Monday, being the 26th day of November, 1888, present term thereof, at 12 o'clock M., or so soon thereafter as counsel can be heard, the foregoing motion and brief.

CHARLES C. LANCASTER,
*Counsel for Appellee.*

Nov. 17th, 1888.

Service acknowledged.

ROBERT A. HOWARD,
*Ass't Attorney Gen'l.*

Office Supreme Court U. S.
FILED
AUG. 6 1888
JAMES H. MCKENNEY,
CLERK.

IN THE

# Supreme Court of the United States.

OCTOBER TERM, 1888.

*No. 1055.*

---

***THE UNITED STATES, Appellant,***

*vs.*

***TYLER DAVIS, Appellee.***

---

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

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## BRIEF OF APPELLEE.

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CHARLES C. LANCASTER,
*Counsel for Appellee.*

---

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

# Supreme Court of the United States.

*OCTOBER TERM, 1889.*

---

THE UNITED STATES, Appellant,
*vs.*
TYLER DAVIS, Appellee.
No. 1033.

---

*Appeal from the District Court of the United States for the District of Maryland.*

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## BRIEF OF APPELLEE.

The facts in this cause are fully set forth in the record, and need not be repeated here.

The appellee relies upon the principles of law enunciated in the decision of the district court, and deems them sufficient to dismiss this appeal.

The same question was reviewed by the Court of Claims in the case of Henry A. Sanborn *vs.* United States, No. 16,257, 24 C't Cl's, p. —, and decided in favor of the claimant, and no appeal was taken by the United States.

The opinion of the Court is here given in full.

"DAVIS, J., delivered the opinion of the Court:

"Under the election laws of New Jersey the boards of registry hold their first meeting on Tuesday, three weeks next preceding the general State election, at 7 o'clock in the morning, and remain in session until 8 o'clock at night. The board of registry also meets on Thursday next preceding the day of general election, at the same hour and place as their first meeting, for the purpose of revising and correcting the

original register. ("An act to regulate elections," approved April 18, 1876, sections 164 and 165.)

"Plaintiff, having been appointed a special deputy marshal, was assigned to duty at the polls on the two registration days and upon election day to aid the chief supervisor of elections and to preserve order. Upon four other days he was detailed by the marshal to perform special duty under the direction of the chief supervisor; performing this duty, he visited various houses in the various districts, made examinations as to the qualifications of the persons registered whose right to vote was doubted or about whom some question had arisen, and verified the registry lists.

"For all this service, covering seven days, plaintiff has been paid but $10, and now sues for $25, being $5 a day for the remaining five days.

"The powers and duties of marshals during an election are prescribed in section 2021 and following sections of the Revised Statutes. Section 2021 provides that the marshal, when requested, shall appoint special deputy marshals—

"Whose duty it shall be, when required thereto, to aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted; to attend in each election district or voting precinct at the times and places fixed for the registration of voters, and at all times or places when and where the registration may by law be scrutinized and the names of resident voters be marked for challenge; and also to attend at all times for holding elections the polls in such district or precinct.

"Section 2022 provides—

"SEC. 2022. The marshal and his general deputies, and such special deputies, shall keep the peace and support and protect the supervisors of election in the discharge of their duties, preserve order at such places of registration and at such polls, prevent fraudulent registration and fraudulent voting thereat, or fraudulent conduct on the part of any officer of election, and immediately, either at the place of registration or polling place, or elsewhere, and either before or after registering or voting, to arrest and take into custody, with or without process, any person who commits, or attempts or offers to commit, any of the acts or offenses prohibited herein, or who commits any offense against the laws of the United States.

"These are the only sections important to this case.

"A marshal is a peace officer; his general duty is similar to that of a sheriff; he is to serve process, to make arrests, and to keep order. The marshals may be termed the national police. It would seem at first glance to be inconsistent with the general scope of the duties incident to his office to place upon the marshal duties similar to those of a supervisor of election, while we would naturally expect him to be charged with the maintenance of order at the polling places and places

of registration of voters. It would not be unnatural to find a special deputy marshal ordered to accompany and to protect a supervisor in his house-to-house examination; but it would not be a duty incident to the character of his office, for the marshal or his special deputy to make these house-to-house visits alone, for the purpose of examining into the qualifications of contemplated voters; that is, while the supervisor and marshal act in conjunction, the one would properly supervise the elections and detect frauds, while the other would maintain the peace, guard the supervisors, and arrest offenders.

"We are, however, of the opinion that section 2021, Revised Statutes, prescribed new duties for the marshal different in kind from those of a peace officer. The duty there imposed is thus defined: "To aid and assist the supervisors of election in the verification of any list of persons who may have registered or voted." A necessary incident to such verification is a visit to the houses of suspected citizens for the purpose of detecting fraud. This statute does not say "to protect" the supervisors in the verification of the lists, but "to aid and assist" them. The use of this language, we think, implies an intent upon the part of Congress to require of marshals, at election time, a new duty different from that which they would naturally perform, a duty similar in kind to that of a supervisor of elections. This seems to be the intent of section 2021. The next section relates purely to police powers. There we find a direction "to keep the peace," to "protect the supervisors of election in the discharge of their duty," to "preserve order" at the places of registration and at the polls, to "prevent fraudulent registration and fraudulent voting thereat," and so on. If the only duty of a special deputy marshal in the verification of registration lists is to physically protect the supervisors, then the provision in section 2021 is useless, for this duty is in terms prescribed by section 2022. We are of opinion that plaintiff was entitled under section 2031, Revised Statutes, to the fees therein prescribed for seven days' service, on account of which he has been paid for two days.

"We do not understand that the indorsement on his appointment operates as a bar against this action. Plaintiff thereby simply agreed to hold the marshal personally harmless in case the Government did not pay him, and not to claim payment out of the marshal's fees.

"Judgment for plaintiff in the sum of $25."